Approved 3-05-87
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Rep. Dale M. Sprague at
Chairperson

3:30 xx a.m./p.m. on February 19, 1987 in room 531-N of the Capitol.

All members were present except:
Rep. Gross, excused
Rep. King, excused
Rep. Littlejohn, excused

Committee staff present:

Chris Courtwright, Research Department
Bill Edds, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Bud Cornish, Ks. Life Assoc., Kansas Assoc. of Property/Casualty Ins. Co., Inc.
Jerry Palmer, Ks. Trial Lawyers Assoc.
Tim Alvarez, Ks. Trial Lawyers Assoc.
Ron Smith, Ks. Bar Assoc.

The meeting was called to order by the Chairman.

The minutes of the February 17 and February 18 meetings were approved.

Mr. Bud Cornish, Kansas Life Association, requested the introduction of a bill regarding the conversion of mutual insurance companies to stock companies. It would change the date for establishment of conversion values and provide for notice to eligible policyholders regarding the option to purchase stock.

Rep. Harper made a motion that such a bill be introduced; Rep. Neufeld seconded the motion. The motion carried.

Hearing for opponents on: HB 2147 - Insurance; amending the Kansas automobile injury reparations act

Mr. Jerry Palmer, KTLA, presented testimony in opposition to the bill saying that it unfairly restricts the right to recover compensation for damages, that it isn't proper to require Kansans to purchase insurance to cover their possible pain and suffering, and that the extra coverage can be voluntarily purchased today. (Att. 1.) He exhibited a copy of the declaration page of his auto insurance policy and questioned that double the benefits could be provided with no increase in premium. He contended that there has been a real decrease in liability insurance since 1973 due to the 55 m.p.h. speed limit and safer vehicles. He cited an example in which a woman's medical bills fell under $1500, and although she suffered physically and emotionally, she would have received nothing from the wrongdoer or her insurance company for pain and suffering under the proposed bill.

Mr. Tim Alvarez, KTLA, presented summaries of five cases he has represented and compared settlements to what would have been received under HB 2147. (Att. 2.) He said he was addressing another side of the story--the impact on Kansas residents due to the negligence of the other party. He submitted that HB 2147

would represent less money to fewer people in the same amount of time.

He continued that many of his clients don't have medical coverage. Many don't have the education to deal with the claimant's insurance company. If he is able to get a settlement, his fee percentage is figured after the expenses are paid; expenses are paid out of the settlement, including reimbursement of the PIP benefits. Even after these costs, clients received more than under the proposed bill. He was asked to supply exact figures as to what the clients received in these cases.

Mr. Palmer was asked why it is being insinuated that the general benefits policy is new, as it is similar to the previous stacking provision. He said that the consumers have not asked for the change and that one basis the supreme court used for upholding the no fault law was that it would prevent people from becoming dependent upon society. He said that it might be difficult to establish the object of mandating insurance that nobody wants and that raising the threshold beyond the CPI figures would also be questionable. He said if there were a problem that the $500 threshold was too low, it would show up in an increase in premiums.

Mr. Ron Smith, KBA, expressed support for the current form of no fault and an adjustment in the tort threshold and PIP benefits, and opposed a verbal threshold. (Att. 3.) He contended that the incidence of abuse will creep up with time, that general benefits will be a self-inflicted wound. He doesn't think it should be mandated as the coverage can be purchased now.

A memo was distributed from Mr. Dick Brock, Kansas Insurance Department, regarding the cost impact of the changes proposed by HB 2147. (Att. 4.)

The meeting was adjourned at 5:00 p.m.

Date: 2-19-87

GUEST REGISTER

HOUSE
COMMITTEE ON INSURANCE

NAME	ORGANIZATION	ADDRESS	PHONE
Richard Hesse	KTLA	Topeka	232-9756
Andrea Letarte	KS. Hospital Assoc.	Topeka	233-7436
Ron Todd	Ks. Insurance Dept.	"	296-3071
R. E. Arbuthnot	KTLA	Topeka	
Dick Brock	Ins Dept	"	
Larry Magill	IIA.K.	"	
Tim Alvarez	KTLA	Kansas City, KS	281-7300
Molly Daniels	Ks Dept on Aging	Topeka	296-4986
Ron Smith	KBA	Topeka	234-5696
David A. Ross		Shawnee, Ks.	422-7290
Mark Bennett	[illegible]	Topeka	
Gary Pauley	State Farm Ins. Co.	Bloomington Ill.	766-2729(309)
L. M. Cobbish	Ks Assoc of Prop & Cas Co.	Topeka	232-0545
William L. Mitchell	Alliance Ins.	Hutchinson	665-5211
Dick Scott	State Farm Ins	O.P. Ks	469 6914
Steve Ortmeyer	State Farm Ins.	O.P. Ks.	469 6960

TESTIMONY OF THE
KANSAS TRIAL LAWYERS ASSOCIATION

H.B. 2147
February 18, 1987

HISTORY OF NO FAULT

Between 1971 and 1975 twenty-seven states and the District of Columbia passed bills enacting No Fault Auto Insurance. One state, Nevada, has repealed the legislation. In two others, New Mexico and Illinois, the bills never became law. No state has passed a No Fault bill since 1975.

The Kansas Automobile Injury Reparations Act (No Fault law) was enacted in 1973. The purpose of the Act, according to K.S.A. 40-3102, is "to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance or use of motor vehicles in lieu of liability for damages to the extent provided herein."

The Kansas law provides for mandatory insurance with liability limits of $25,000/$50,000 per accident; personal injury protection (PIP) benefits for disability, survivor's benefits, medical expenses, funeral benefits, rehabilitation expenses and substitute service expenses. The PIP benefits provide "first party coverage" and pay expenses for persons injured in accidents.

There is a two-part "threshold" in the No Fault law. Although the term is deceptive, the threshold is a bar or prohibition from court unless the injured person meets the statutory test. In the Kansas law, the threshold is $500 in medical expenses or "permanent disfigurement, fracture

of a weight bearing bone, a compound, comminuted, displaced or compressed fracture; loss of a body member, permanent injury or loss of a body function or death."

The current Kansas law has, by comparison, relatively low PIP benefits and an average threshold. Threshold levels for the twenty-three states and the District of Columbia are shown in the chart below.

9 States/D.C.	No threshold, verbal or monetary, restricting the right of a person to assert a claim.
3 States	Verbal only
1 State	Verbal/$200 monetary
1 State	Verbal/$400 monetary
5 States	Verbal/$500 monetary (includes Kansas)
1 State	Verbal/$750 monetary
2 States	Verbal/$1,000 monetary
1 State	Verbal/$3,600 monetary
1 State	Verbal/$4,000 monetary

Since the enactment of the Kansas No Fault law in 1973 the insurance industry has pushed for alterations. Almost yearly there have been bills introduced proposing raises in the PIP benefits and raises in the tort threshold. A bill finally was passed by both Houses of the Legislature in 1983, but was vetoed by Governor John Carlin. The subject was referred to an interim study. That bill contained a $1,500 monetary threshold.

1984 INTERIM STUDY

A Special Interim Judiciary Committee was directed to

study the No Fault law and "determine whether changes are needed in the tort threshold, the level of personal injury protection benefits, and other aspects of the law." For the first time in this lengthy debate, the industry was asked to submit data on the Kansas No Fault experience. The Committee heard extensive testimony from the insurance industry and the legal community and made recommendations to raise PIP benefits.

Ultimately, the Interim Committee recommended no change be made in the tort threshold. A significant factor in the Committee's decision was the testimony of two major insurers on the premium increases which would result from a raise in PIP benefits without an increase in the threshold.

State Farm Insurance told the Committee that premiums would increase $3.10 per six-month period and Western Insurance quoted a $2.50 per six-month increase. The majority of the Committee felt that the increase was negligible considering the overall premium costs and was justified to insure those who experience pain and suffering as a result of an automobile accident.

1985 - 1986 LEGISLATION

The '84 Interim Committee's study resulted in legislation introduced in 1985. The bill was continued to the '86 session, taking many forms during the two year process. Late last year, the Legislature narrowly passed a bill with a $3,000 tort threshold. The vote in the House was 67-55. H.B. 2422 was vetoed, and because of the closeness of the House vote, no

attempt was made to override it.

1987 - KTLA'S POSITION ON H.B. 2147

KTLA opposes H.B. 2147 for three reasons. First, raising the monetary threshold and eliminating some verbal thresholds unfairly restricts the right of injured Kansans to recover justifiable compensation for damages. Second, the addition of the new "general benefits" is an improper method to provide coverage for pain and suffering claims. We do not feel Kansans should be required by law to purchase insurance to cover their possible pain and suffering in the future. And finally, we know of no groundswell of interest by Kansas citizens to pass a law mandating additional PIP benefits coverage. Those that want extra coverage are voluntarily purchasing it today. Who besides the insurance companies are asking for these changes?

EXPLANATORY COMMENTS

Currently, many Kansas citizens have coverage which duplicates PIP benefits. They have health insurance, disability insurance, workers compensation and a variety of insurance coverages which would pay bills. Raising PIP benefits forces all Kansans to purchase extra coverage which may duplicate their current insurance, and therefore provides no actual benefit to the insured.

Although the data submitted by insurance companies does not allow a full and complete analysis, it does indicate that more than half of Kansas drivers currently voluntarily purchase increased PIP benefits. The increased benefits, far in excess of H.B. 2147, are very inexpensive (from $2.00 to $6.00 per

year). These drivers would receive no direct benefit from H.B. 2147 and would be required to share the costs of mandatory increased coverage for other Kansas drivers.

KTLA feels that it is an appropriate public policy choice for the Legislature to weigh the merits of increased benefits. Even though the costs may be relatively modest, it may be too expensive for some citizens. Since many Kansans already carry higher PIP benefits, and have other insurance which duplicates the benefits, it would be better to leave the existing system in place. If more citizens were driven out of the insurance market because of minor increases, the net effect would be negative.

H.B. 2147 is one more demonstration of the insurance industry's attempt to convince the Legislature that it is good public policy for people to be forced to buy insurance, to be forced to purchase increased protection and to suggest that they pay for the coverage by releasing their legal rights to adequate compensation if they are injured.

For the first time, we have some specific information about No Fault. According to industry data, approximately 71% of the auto claims fall under the existing $500 threshold. Consequently, the threshold is effective in keeping small claims and the vast majority of claims out of the court system.

H.B. 2147 suggests that PIP benefits be increased by as much as 2.5 times the existing level and that the monetary threshold be raised 500%. In addition, there would be further

restrictions in the verbal threshold.

Removal of the verbal threshold language, including fractures to various bones, is intended to further eliminate awards for pain and suffering in these injuries. Anyone who has ever suffered a break of a bone fitting into this definition can readily understand that pain and suffering are an enormous part of these injuries.

The tremendous increase in the monetary threshold is justified by the proponents due to the addition of new section (bb) on page 5. The "general benefits" provision does not exist in any law in the country, perhaps with good reason.

The formula automatically pays injured drivers additional money in exchange for losing their access to court. Unfortunately, it is the worst of all worlds. Anyone with a serious and debilitating injury would be grossly undercompensated for pain and suffering under the general damages scheme. If an injury results in $1,500 of medical bills and a lifetime of pain, an injured person would receive an additional $500.

On the other hand, the "general damages" payment would automatically go to injured drivers, regardless of fault. If a drunk driver injured others and hits a tree resulting in a personal medical bill of $1,500, he would be entitled to receive the additional payment of $500. This is not a cost saving measure and is basically not fair. It raises the legitimate question of freedom of choice.

No one has to hire a lawyer. Victims seek legal counsel when they feel that they are not being treated fairly by

Comparisons of % Increases
1/1/74 thru 1/1/87 13 years
(Source: Kansas Department of Insurance)

I.S.O. Liability Insurance	152%
*C.P.I.	142.9%
*Price Index Medical Care	215%

Therefore IF adjusted by C.P.I. Real Increase +	1.06%
IF adjusted by Med. PI Real Decrease -	29.31%

*Assumes 1985 % increase is equal to 1986 increase.

THE IMPACT OF H.B. NO. 2147 ON INJURED PERSONS

The following are summaries of actual cases wherein Kansas residents have been injured as the result of automobile accidents due to the negligence of others. These summaries are useful because they demonstrate two problems with H.B. 2147. First, the summaries demonstrate how each injured person deserves and is entitled to different levels of compensation depending on the particular facts and circumstances of each accident. House Bill 2147 does not and cannot take into account the differences between and among individual cases. Secondly, the summaries are useful in that they prove that the overall compensation an individual would receive under the proposed legislation falls short of the actual compensation received by injured persons under the present system.

SUMMARY NO. 1

Tommy E. was a passenger in an automobile which the driver had parked along a curb so as to allow his passengers to exit. However, the driver pulled away from the curb before Tommy E. had exited and closed the door. As a consequence of putting the automobile into forward motion, the leg and foot of Mr. E. was wedged between the tire and the curb where the tire subsequently ran over the leg. As a consequence, Tommy suffered a compound fracture of the right tibula and fibula. It was necessary to surgically place a plate at the site of the fracture. It is uncertain whether the plate will have to be removed in the future. Tommy incurred $2,912.00 in medical expenses as well as $2,400.00 in lost wages. Because of the nature of his injury, the pain and suffering involved, and the uncertainty of future medical care, Tommy received total recovery of $19,0000.00.

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Under the proposed H.B. 2147, Tommy would have received $7,224.00.

SUMMARY NO. 2

Kenneth P. was injured in an automobile accident when another vehicle negligently made a left hand turn into Mr. P.'s vehicle. Mr. P. experienced pain in his chest as a consequence of the accident and was rushed to a hospital emergency room. X-rays determined that Mr P. had suffered a fracture of the sternum and a premature ventribular contraction of the heart. During the course of his hospital stay, he suffered ventricular contradictions two more occasions. Subsequent testing indicated that there was no permanent injury to the heart muscle.

Mr. P. incurred medical expenses in the amount of $2,173.00. This case provides a good example of how medical alone may not be a good indication of non-pecuniary losses. Because of the pain associated with a fracture sternum, it was necessary for Mr. P. to employ the services of a driver for twenty weeks, nearly six months, following the accident. This case resulted in a recovery to the injured party in an amount of $8,341.59. Under the proposed H. B. 2147, Mr. P. would have received $3,988.00, less than one-half the amount he received under the existing law.

SUMMARY NO. 3

Pam K.,was a 37 year old nurse, wife and mother of three, when she was rearended at an intersection by an inattentive driver. At the time of the accident, Pam's two children and young infant daughter were also in the automobile and all occupants were using seatbelts. As a consequence of the rearend collision, Pam sustained soft tissue injuries to her neck and upper back. She was immediately rushed to the hospital by ambulance and later underwent several weeks of physical therapy in an attempt

to lessen the pain and restore the range of motion to her neck and back. Her recovery was slow and painful and psychologically very difficult for this woman since she was not able to care for or nurse her five (5) week old infant daughter.

Pam incurred medical expenses in the amount of $1,718.30 and lost wages in the amount of $1,100.75. A settlement was reached in this matter in the amount of $7,000.00. Under H.B. 2147, Pam would have received $3,537.35 rather than $7,000.00.

SUMMARY NO. 4

Deborah D. is a 24 year old junior college student who was rearended by an intoxicated driver. The driver was subsequently charged with careless driving, no valid driver's license, and driving under the influence of alcohol.

As a consequence of the collision, Deborah sustained a strain of the cervical spine (neck) and a hemagioma also in the cervical spine. This hemagioma was essentially a benign mass of cells and blood vessels caused by the accident. For these injuries, Deborah underwent several weeks of physical therapy.

Medical bills in this matter totalled $2,767.23. There were no lost wages because this young woman was a fulltime student. However, due to the nature of her injuries, she was unable to complete the semester she was enrolled in and consequently has been put back one year in her field of study. This is again an element of damage that cannot and will not be compensated for under the proposed legislation. This matter was concluded for $8,500.00. Under the proposed legislation, Deborah would have received $4,534.46.

SUMMARY NO. 5

Joyce C. and her fifteen (15) year old son, Lonnie, were injured in an automobile accident when their automobile was struck from the rear by an inattentive driver while they were making a left hand turn.

Both mother and son were taken to the hospital by ambulance where they were subsequently treated for soft tissue neck and back injuries over a period of several months. Joyce's medical bills totalled $1,201.99 and her son's bills totalled $644.50. These two cases were settled for a total of $5,393.00. Under H.B. 2147, the total settlement could not have exceeded $1,846.49.

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HB 2147
No Fault Insurance
House Insurance Committee
February 18, 1987

Mr. Chairman, Members of the Insurance Committee. Points to remember about No Fault insurance legislation:

What Does KBA Support?

I. KBA Supports the current form of no fault in Kansas -- without general damage benefit provisions. Its provisions have given us a balanced no-fault law.

II. KBA supports an inflation adjusting increase in the tort threshold. In 1985, we recommended a $1,000 threshold but would have supported $1,250.

III. KBA supports an appropriate inflationary increase in the Personal Injury Protection Benefits.

IV. We oppose changes in the verbal threshold.

* * * * * * *

1. The Present System of Kansas Modified No-Fault Works! It is "balanced." That means that, injury for injury, the no fault system gives the same benefits at about 9% less premium cost than similar benefits had we kept the tort system. A federal report provided by the Alliance of American Insurers says Kansas no fault statutes are "in balance."1/

2. Since our current laws are "balanced," obviously the consumer doesn't want that balance changed for any reason, nor should HB 2147 create the potential for changing that balance. Nothing should be allowed to upset this "balance."

(a) Will Kansans cheat on this $1,500 threshold?

(b) The Commissioner's office is concerned about this fraud problem, about padding the medical expenses to get to the $1,500 level to get automatic pain and suffering. But they don't think it will be a major problem. On what basis is that statement substantiated? Not from ISO, III, AAI

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or industry data -- there is none on first-party general damage benefits!! Kansas is the guinea pig.

(c) The greater the benefits provided by your own policy, the more temptation to pad the medicals to get passed the threshold.2/

(d) NOTE: New Jersey has a mandatory $200 medical threshold with optional $1,500 deductible threshold; Massachusetts has a $500 medical threshold.3/ KBA submits that 2 to 16% is significant potential and incentive for insurance fraud.

Insurance Costs:[4]

	1983 PIP	1983 BI	Avg B I clm	Tot. PIP Ben.
New Jersey	$82	$175	$8,904	Unlimited
Massachusetts	11	116	6,005	$8,000
Kansas	17	43	7,834	$16,180

3. The industry's arguments for HB 2147 are economic. Benefits can be provided faster without involvement of lawyers, judges, and juries. They can't say this new system is cheaper. They've said it is premium neutral. That means the current law and HB 2147 are going to cost the same. FASTER BENEFITS is the argument. Even with increases in mandatory PIP coverage, medical benefits, especially, are still inadequate, for many accidents.5/ Increasing PIP benefits is fairly economical without any medical expense threshold increase.6/ Any of us can devise a fast delivery system.

4. How can you guarantee new no-fault legislation will not to change the balance? Very simply: (a) keep the same type of modified no fault as was enacted in 1973-74, (b) adjust the PIP benefits for inflation, and (c) adjust the medical expense tort threshold for inflation.

Mr. Brock testified on Tuesday that if you take out the general damage benefit, and increase medical expense threshold to $1,580, that change also would be "premium neutral," and still provide the same level of PIP benefits.7/

5. Several proponents said yesterday that the original purpose of no fault was not to save premiums. Maybe not. But it was sold that way. That is evident in the 1971 Interim Special Committee on No Fault Insurance report which said: (a) the recommended legislation was a "compromise" (p. 379); (b) there is "no court congestion and trial delay" in Kansas because of auto cases (p. 379); and the following:

(c) "A final word of caution is in order. Many proponents of no fault plans speak and write of reduced insurance costs after the adoption of such a plan. No data is yet available which would prove the correctness of this position. In the metropolitan areas of the east, some reductions may be effect-

ed because rates are presently many times the cost in Kansas which is said to rank 45th in the U.S. in insurance costs. It is much easier to achieve rate reductions from the highest prices in the country than it is when you begin with one of the lowest. The committee does not predict lower premiums simply by the adoption of its no fault proposal." (emphasis added) p. 380.

Whoever was promoting no fault in 1972 was obviously promoting it as saving insurance premium costs. The legislature didn't buy that argument, but they acknowledged it was being made!

6. The 1973 Legislative compromise was $500. To now justify the $3,000 as the correct tort threshold, one must argue $500 was obviously too low in 1973. Those who say it should have been $1,000 in 1973 admit their request for a higher beginning was rejected by a majority of the members of the legislature. That argument is inconsistent with the Interim Committee finding above.

7. No Fault is not like Workers Compensation. The two insurance concepts have dissimilar purposes, rights, duties and responsibilities. Therefore, the insurable interest in workers compensation is not the same as auto negligence.8/

8. Insurable Interest is important because of its reason for existence. Professor Bob Jerry of the KU Law School and its Insurance Law professor who has authored an Insurance Law Textbook9/ in a letter concerning HB 2147 has said:

> "It is obvious that [HB 2147] general damages bear no relationship whatever to the insured's economic loss. Essentially, if the insured is fortunate enough to incur medical expenses exceeding $1,500, the insured gets a 'bonus windfall' as calculated in the general damage formula. Awarding compensation for noneconomic loss under a no-fault plan is problematic, however, for the following reasons.
>
> "First, the general damages provision is a complete departure from the premise on which Kansas no-fault is based. Those states that have enacted no-fault legislation have accepted the following assumption: injured auto accident victims who suffer minor injury would prefer to receive prompt, certain payment of their economic loss (the no-fault benefit), with no payment for pain and suffering, as opposed to suing in tort for a chance at a long-delayed sum of money that might compensate for economic loss plus pain and suffering. * * * The general damages provision rejects this assumption . . . I am aware of no changed circumstance that justifies the Kansas Legislature in 1987 rejecting the assumption that underlined the system enacted in 1974. * * * No first-party insurance -- life, property, health or accident -- provides compensation for pain and suffering."

Professor Jerry analyses health and accident coverage as the closest thing to first-party pain and suffering:

> "* * * Even here, the theory of the policy is to provide, loosely speaking, compensation for the economic loss suffered as a result of accidental death or accidental permanent injury. * * * Thus the insurable interest doctrine, a principle that one cannot insure property or life for more than one's interest in that property or life, provides a limit on insurance coverage in order to eliminate the incentives for intentionally-inflicted loss. The theory of the * * * doctrine is indemnity: one should not be able to recover more than what is necessary to reimburse economic loss. * * * "With respect to HB 2147's coverage of general damages," it is significant that there is no built-in deterrent for insureds taking steps to bring themselves within the coverage. Moreover HB 2147's coverage of noneconomic loss is contrary to the logic of all other kinds of first-party insurance.
>
> * * * [T]he general damages provision will encourage insureds to pad their out-of-pocket medical expense in order to secure the general damage benefit. An auto accident victim who has incurred $1,400 in medical expense has an obvious incentive to incur $100.01 in additional medical expenses because this will entitle the victim to $500 in additional compensation. In fact, for each dollar of additional medical expense over $1,500 until the insured reaches $3,000 in total medical expenses, all of which is reimbursed under the separate medical expense coverage, the insured stands to receive one more dollar in additional compensation. Each extra dollar awarded has no relationship to an out-of-pocket expense. The incentive the injured insured has to pad medical expenses is obvious. At a time that rising health care costs pose a substantial problem in this state and elsewhere, it would be ironic if the Kansas legislature were to create an explicit incentive for accident victims to consume unnecessary medical services.

Professor Jerry says:

> " * * * Under the proposed framework, health care professionals have no reason to refrain from cooperating with the insured in padding expenses, since the health care professional is certain to be reimbursed for the services rendered. Thus the pricing structure receives a double whammy, all of which must be paid through higher no-fault premiums * * * and all of this is detrimental to insurance consumers in Kansas.

"In other words, the general damages provision substantially increases the probability that Kansas will become an out of balance no-fault state. Accident victims have an incentive to inflate their economic loss, and this inflated economic loss will be paid TWICE by insurers -- once as medical benefits * * * and once more as a general damage * * *."

In a legalistic way, what he says is that Kansas may lose its balanced no-fault system with this general damages concept. That is detrimental to the consumer. Your constituents.

HB 2147 is not a "benefit" if it leads to increased insurance fraud. Law-abiding Kansans will pay for it. That is our concern.

Respectfully Submitted,

Ronald D. Smith
KBA Legislative Counsel

* * * * * * * * * * * * *

Footnotes

1. U.S. Department of Transportation, Compensating Auto Accident Victims, May, 1985, p. 96-97.

2. A 1985 Rand Corporation study of no fault closed claim reports: "Claimants face a strong incentive to appear to have exceeded the (tort) threshold, because doing so allows them to press a claim for general damages not covered by PIP insurance, and may even allow double recovery of special damages if the PIP insurer does not require reimbursement from the BI settlement, or if the insurer fails to enforce this provision of its policy." In New Jersey and Massachusetts -- states without this automatic general damage provision -- between 2 and 16% of claimants were padding their medicals, with the assistance of the medical community. (Rand Corporation, Automobile Accident Compensation, Vol. II, 1985, p. 56)

3. FDOT report, ibid, p. 33, 36.

4. ibid, pp. 31, 33, 36

5. The National Highway Traffic Safety Administration issued a 1982 study of different classes of auto accident injuries and estimated that the average economic cost of "critical" injuries were $235,828 and that the economic costs of "severe" injuries were $51,487. "Serious" injuries average $10,257. "Moderate" injuries average $4,080. (All costs were as of 1982; medical inflation has impacted them.) Only

six no-fault states allow medical benefits to exceed $50,000. See Jeffrey O'Connell, Giving Motorists a Choice Between Fault and No-Fault Insurance, 72 Virginia Law Review 61, page 84 (February, 1986). In Kansas, PIP medical benefits under HB 2147 still will not cover even "moderate" injuries.

6. The 1984 Kansas Interim Judiciary Committee reports State Farm insurance predicted without any threshold change, the increased PIP benefits -- including a 250% increase in medical payments -- could be financed for a cost of $3.10 per six months. Western Insurance reported the increase would cost their policyholders $2.50 per six months if the threshold was $1,000 instead of $500. (p. 388.)

7. Keep in mind what is meant by "premium neutral." We are talking about the average BI (Bodily Injury) premium devoted to paying for Personal Injury Protection benefits under no fault. We are NOT discussing the entire policy. Only B.I. coverage. How much is that? State Farm reported that the '84 PIP premium in Kansas is about $55.00.

8. Workers Compensation is purchased by employers to benefit employees. The employees do not purchase the insurance. Nor is workers compensation universally mandated; certain businesses are immune (i.e. agriculture, or less than 10 employees). Employees injured on the job can sue for pain and suffering against negligent third parties; HB 2147 insureds cannot unless the medical or verbal threshold is exceeded. The Legislature determines the worth of a given scheduled workplace injury, not the insurance companies or employers through insurance policies. Workers compensation benefits are not tied to medical care costs. W.C. handles about 60,000 workplace accidents per year in Kansas; there are less than 3500 tort cases filed in Kansas district courts last year, not all of them automobile. The insurable interest of these automobile general damages in HB 2147 is not the same as workers compensation. The two systems are dissimilar. Remember: after last year's 17% increase in W.C. premiums, Kansas businessmen are not any happier with their workers compensation insurance costs than anything else. See the hearing on HB 2186 in the House Labor committee.

9. R. Jerry, Understanding Insurance Law, New York: Matthew Bender; publication in 1987 forthcoming; for the understanding of No Fault Insurance, Chapter 13. For the insurable interest doctrine, see chapter 4.

What is best for the Kansas consumer?

HB 2147 WITHOUT GENERAL DAMAGES PROVISION $1,500 medical threshold; improved PIP Benefits per HB 2147?	HB 2147 AS DRAFTED
Sure and certain PIP Benefits	Same
No PIP premium increase	Same
No statutory enticement for insurance fraud or padding. When person reaches $1,500 in medical they still may not recover any pain and suffering.	Probably will have at least greater temptation for "padding medical expenses."
No payment for "general damages"	Pays between $500 to $2,000 general damages if Medical expenses exceed $1,500.
No payment of any pain and suffering to: (1) drunk drivers (2) reckless drivers (3) persons more than 50% at fault in their own injuries.	Pays first-party pain and suffering to (1) drunk drivers (2) reckless drivers (3) persons more than 50% at fault in their own injuries
Makes it Less difficult to settle bonafide injury cases, If medical expenses are $3,001. Claimant can sue only if other driver more at fault than the Claimant. Fewer Defense costs.	Makes it more difficult to settle $3,001 claim; claimant has a $2,000 "stake" in going after whatever else he/she feels is "due." Possibly more defense costs.

HB 2147 WITHOUT GENERAL DAMAGES PROVISION $1,500 medical threshold; improved PIP Benefits per HB 2147?	HB 2147 AS DRAFTED
Pays no pain and suffering; general damage benefits are paid only if case is settled or there is a jury verdict; the plaintiff still must prove defendant was more at fault than claimant.	Pays duplicate pain pain and suffering for those cases where the claimant goes on to sue for damages, and recovers.
Pain and suffering remains a part of tort damages; not paid "first-party" through your own insurance. POLICIES ARE MAINSTREAM NO FAULT POLICIES.	Pain and suffering is paid "first-party" insurance. Unique in the country. POLICIES are UNIQUE in country
Measuring actuarial effect of bill on costs easier to update and predict	Actuarial impact is speculative; no other experience of this type of insurance anywhere.
Kansans do not pay help insure duplication of benefits or first-party pain and suffering through risk spreading insurance device.	All insurance policyholders assume part costs of paying for insurance fraud through risk spreading no-fault insurance.
Deters insurance "padding" of medicals. All persons get if they get to $1,501 is the right to sue.	At $1,501, the insured begins collecting $500 to $2000 in extra scheduled general benefits
Kansas No fault remains "in-balance."	"Out-of-Balance no-fault results if the general damage benefits produce insurance fraud.

Car insurance forecast: Up 10% in '87

By Michelle Hill
USA TODAY 11/28/86

Fuming auto-insurance consumers may overheat by next year. Reason: Auto insurance rates have been accelerating and there's no brake in sight.

Rates will be up 10 percent to 13 percent this year, far ahead of inflation, which is running about 2 percent.

Rates rose about 9 percent in 1985, said Joseph L. Grochmal, an insurance industry analyst at brokerage Conning & Co. in Hartford, Conn.

Forecast for 1987: at least another 10 percent hike.

Typical rate: A single man, 30, in Albany, N.Y., no accidents, driving a 1986 Olds Cutlass Supreme, paid Allstate $550 this year.

Blamed for the rate hikes:

■ Lower gas prices, which put more people on the road — 84.35 cents a gallon now, vs. $1.21 at this time last year, says *The Lundberg Letter*.

■ Rising legal, medical and car-repair costs. The medical part of an auto insurance claim has risen between 10 percent and 18 percent in the past 18 months, said Bob Meger of the Alliance of American Insurers.

■ Claims paid out and operating costs exceeding premium income — a gap of $5.1 billion in 1985. But with investment income and capital gains, firms are in the black, said Jay Angoff at the National Insurance Consumer Organization.

He says the hikes may be warranted: "I hate to pooh-pooh the increases, but compared with what's happening in general liability (insurance) — where average rates are up 72 percent ..." The industry has such a bad reputation, he says, that "when they do tell the truth you're skeptical."

Issue: No-fault laws.

KBA Position: The Kansas Bar Association SUPPORTS adjusting PIP benefits and medical expense thresholds to reflect the impact of inflation since enactment of the original no-fault law in 1974. KBA OPPOSES arbitrary increases in the tort threshold which change the delicate legislative compromise reached in 1974, and modifications of current "verbal thresholds."

Rationale: The original no-fault concept in 1974 was a compromise of numerous viewpoints. Experience under no-fault has accomplished one of the principal purposes, that of getting needed personal injury benefits to injured policy holders without the requirements of lawsuits.

No one doubts that inflation has eroded the compromise, which was designed to exclude approximately 70% of small auto negligence cases from the tort liability system. To go beyond an inflationary adjustment without appropriate data and justification from insurance companies would be inappropriate public policy.

To the extent justified, KBA would support increasing the tort liability threshold commensurate with need, but not to exceed $1,000, which we believe would adequately speak to inflationary concerns.

Issue: "First party pain and suffering" statutes.

KBA Position: KBA OPPOSES the concept of mandatory "first party pain and suffering" insurance coverage.

Rationale: Some proponents of a substantial increase in no fault medical expense threshold also propose mandatory insurance coverage for first party pain and suffering. Essentially, this means people injured in auto acccidents would have to buy their own pain and suffering coverage.

The proposal is unique. No state has experience to suggest the true cost of such coverage. The proposal is most objectionable, however, because it is apparently offered as the basis for further limitations on the right to bring a lawsuit.

A recent Federal Department of Transportation study indicated Kansas no fault laws are "in balance" between awards paid under no fault and the original intent of the act to weed out smaller cases. Implementing this untried first party pain and suffering concept in Kansas might jeopardize that "balance."

KBA supports modest inflationary increases in the current medical tort threshold and PIP benefits. However, the practical effect of this statutory pain and suffering award would be to increase the tort threshold to $3,000, which is higher than necessary to adjust for inflation.

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Commissioner

M E M O R A N D U M

TO: Committee on Insurance
Kansas House of Representatives

FROM: Dick Brock
Kansas Insurance Department

SUBJECT: House Bill No. 2147
Rate Additions and Reductions

DATE: February 19, 1987

Pursuant to requests from several members, I have reviewed my notes regarding the cost impact of the changes proposed by the subject bill. I want to point out that, in obtaining this information, I relied on verbal communication. Thus, I did not request or receive any kind of formal, printed report and, frankly, I doubt that one was prepared. I was led to believe the information provided was an actuarial projection based on the experience and best judgement of the individual actuaries that developed the estimates. As such, the information does not lend itself to development of a formal actuarial opinion.

With the above preface, I visited with no more than a "half a dozen" insurers who write a significant number of automobile insurance policies in Kansas. Farmers Alliance, Farm Bureau, State Farm and Farmers Insurance come quickly to mind but I believe there were one or two others. Each company was asked if they could and would provide information regarding the estimated cost impact of increasing the PIP benefits; adding the "general damages benefit"; removing the so-called fracture language from the tort threshold and raising the tort threshold for nonpecuniary damages to $3,000. From the information received, the following represents a fair consensus of such estimates:

Increase in PIP benefits: Add - $4.20 per 6 months
Increase in tort threshold to $3,000: Subtract - $2.80 per 6 months
General damages benefit: Add - $2.80 per 6 months
Remove fracture language: Subtract - $2.00 per 6 months

The net effect of the above would be a net increase in the liability portion of the "average premium" of $2.20 or about 8%. However, when consideration is given to the fact that the vast majority of private

passenger automobile insurance policies include physical damage coverages (collision and comprehensive) the net effect is only about 1/2 of 1% which all companies agreed would be what they termed "a wash". In addition, it was emphasized that many insureds already purchase PIP benefits all or some elements of which exceed the minimums proposed by House Bill 2147. For example, one of the companies indicated that 65% to 70% of their policyholders already purchase benefits equal to or greater than those proposed except for slightly lower wage loss coverage. To the extent additional limits are now purchased, the impact will be even less and in many cases may produce a premium reduction for individual policyholders.

Needless to say and as already inferred, actual impact of the changes proposed by House Bill No. 2147 will vary with each individual company and insured depending on the adequacy or inadequacy of existing rates, the characteristics of their policyholder population, the coverage now purchased in relation to the coverage purchased if the changes proposed are enacted, actual loss and expense experience and a virtually endless list of other variables. However, the above projections do give us some insight into the economic impact of House Bill No. 2147 and that in itself is helpful.